

Members

Sen. Joseph Zakas, Chairperson
Sen. Murray Clark
Sen. Rose Antich-Carr
Rep. Ralph Foley, Vice-Chairperson
Rep. Eric Koch
Rep. Robert Kuzman
Tim Sendak
Dave Pendergast
Tom Hardin
Chris Colpaert
Kris Fruehwald
Dan Reeves
Jim Martin



PROBATE CODE STUDY COMMISSION

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

LSA Staff:

James Landers, Fiscal Analyst for the
Commission
Ross Hooten, Attorney for the Commission

Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: August 30, 2005
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Joseph Zakas, Chairperson; Sen. Rose Antich-Carr; Rep. Ralph Foley, Vice-Chairperson; Rep. Eric Koch; Tim Sendak; Dave Pendergast; Tom Hardin; Chris Colpaert; Kris Fruehwald; Dan Reeves; Jim Martin.

Members Absent: Sen. Murray Clark; Rep. Robert Kuzman.

I. Call to Order and Introduction of Members

Senator Joseph Zakas, Chairperson of the Commission, called the meeting to order at 10:10 a.m. and introduced the members of the Commission.

II. Review of Commission's Charge

Senator Zakas summarized the agenda items for the meeting and reviewed the Commission's statutory charge (Exhibit 1). Senator Zakas also explained that, in addition to its statutory charge, the Legislative Council directed the Commission to review issues regarding living wills. This additional charge was requested under Senate Resolution 62 of 2005 by Senator Lanane (Exhibit 2).

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

III. Commission Discussion Concerning the Indiana Estate Tax

Senator Zakas recognized Ross Hooten, Attorney for the Commission, to explain the Estate Tax and current issues involving the tax to the Commission.

Mr. Hooten explained how the Estate Tax works and its linkage to the federal Estate Tax via the federal credit granted for state death taxes. Mr. Hooten directed Commission members to review tables prepared by the Legislative Services Agency showing quarterly and annual revenue collected since FY 1997 under Indiana's Inheritance Tax and Estate Tax (Exhibit 3). He explained that the decline in Estate Tax revenue occurring since FY 2003 is the result of federal Estate Tax changes. These changes included (1) increases to the federal Unified Credit eliminating Estate Tax for an increasing number of estates and (2) the phaseout of the state death tax credit. Mr. Hooten indicated that the Indiana Estate Tax is currently inoperative as the state death tax credit was fully phased out beginning with the estates of 2005 decedents. Mr. Hooten did indicate that the current federal law changes would, however, sunset at the end of 2010. This would result in the federal Estate Tax law in effect in 2001 going into effect in 2011, including the unified credit levels and the state death tax credit as they existed in 2001.

Representative Ralph Foley, Vice-Chairperson of the Commission, asked Mr. Hooten what alternatives the Commission could consider with regard to the Estate Tax and inquired whether the state could impose its own Estate Tax.

Mr. Hooten directed the Commission to an informational handout discussing actions taken by other states to resolve this issue, with some states choosing to decouple from the federal changes (Exhibit 4).

Senator Zakas asked Jeff Kolb of the Probate, Trust, and Real Property Section, Indiana Bar Association, what the Bar Association's position is on the Estate Tax. Mr. Kolb indicated that the Probate, Trust, and Real Property Section would like to see the Estate Tax and Inheritance Tax eliminated.

Commissioners Kristin Fruehwald and Tim Sendak suggested that the Commission take no action this year on the Estate Tax issue. Senator Zakas agreed that the prudent course of action is to wait and see if Congress makes any additional changes to the federal law.

IV. Consideration of Recommendations by the Probate, Trust, and Real Property Section of the Indiana State Bar Association.

Senator Zakas recognized Jeff Kolb to discuss the recommendations of the Probate, Trust, and Real Property Section. Mr. Kolb provided a written summary to the Commission of the seven recommended changes (Exhibit 5), and indicated that draft legislation was also provided to Mr. Hooten.

The recommended changes discussed by Mr. Kolb are as follows:

- (1) Eliminating the requirement that for an adopted child to qualify for the Class A Inheritance Tax exemption, the adoption must have occurred before the adoptee was totally emancipated.
- (2) Increasing the Class B Inheritance Tax exemption from \$500 to \$20,000, and the Class C Inheritance Tax exemption from \$100 to \$10,000.
- (3) Allowing real property to be transferred to a revocable trust without triggering due on sale clauses.

(4) Granting additional powers to unsupervised personal representatives.

(5) Increasing the amount of a small estate that may be settled by filing an affidavit and without court administration from \$25,000 to \$50,000.

(6) Clarifying that income earned during an estate administration becomes part of the principal and not part of the specific gift unless otherwise stated.

(7) Allowing a trustee to exercise a discretionary power if the exercise is specifically authorized by the terms of the trust.

Senator Zakas indicated that Ross Hooten would begin producing preliminary drafts of the recommended changes, and that these would be made available before the next Commission meeting.

V. Commission Discussion Concerning Living Wills

Senator Zakas indicated that the meeting packets contained copies of Senate Resolution 62 of 2005 (Exhibit 2), the current Indiana law on living wills, a uniform living will act (Exhibit 6), and living will laws from Illinois, Kentucky, Maryland, and Virginia for review by Commission members (Exhibits 7 - 10).

Senator Zakas indicated that the purpose at this meeting was to get some discussion and testimony relating to problems with the current living will law that may need to be corrected.

Senator Zakas recognized Tim Kennedy, Indiana Hospital and Health Association. Mr. Kennedy indicated that the living will law has been effective for patients and family members because the living will provides a record of the patient's wishes regarding his or her care. Mr. Kennedy indicated that in the same way it also has been effective for health care providers. He also indicated that an important provision of the living will law is the provision that allows a physician to withdraw from a case if the physician is uncomfortable with the patient's wishes.

Senator Zakas asked Mr. Kennedy whether the living will law provides protections from liability to health care providers.

Mr. Kennedy indicated that the current law does provide liability protections for health care providers and hospitals.

Commissioner Dan Reeves asked Mr. Kennedy whether the living will overrides the wishes of a patient's personal health care representative.

Mr. Kennedy indicated that he did not think that the current law provides an answer to that question.

Senator Zakas recognized Glenn Tebbe, Indiana Catholic Conference. Mr. Tebbe suggested that circumstances have changed since the living will law was enacted in 1985, so that a review of the law's provisions by the Commission has merit.

Commissioner Jim Martin suggested that the living will law may not be as broad as some people would like. He indicated that current law only deals with patients having a terminal condition, but does not deal with patients who are in a persistent vegetative state.

Senator Zakas recognized Mary Hill, St. Vincent's Hospital. Ms. Hill indicated that there is the potential for conflict between a patient's living will and the wishes of the personal health care

representative. She also suggested that an individual can appoint a personal health care representative and prepare a living will that work together. She explained that some states allow the documents to be combined.

Ms. Hill also addressed Commissioner Martin's concern about persistent vegetative state saying that an argument can be made that the condition is terminal because death will result unless the patient is provided artificial hydration and nutrition.

Commissioner Tim Sendak indicated that he would like the Commission to address the provision allowing a patient's physician to withdraw from providing care to the patient if the physician is uncomfortable or disagrees with the patient's treatment wishes specified in the living will.

Senator Zakas indicated that more testimony on the living will law will be accepted at the next Commission meeting.

VI. Adjournment

Senator Zakas adjourned the meeting at 11:35 a.m.